

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re: Brian J. Cristofono,

Debtor.

Case No. BKY 20-40994
Chapter 7 Case
Chief Judge Michael E. Ridgway

Aneta Lennartson and Top Law, PLLC,

Plaintiffs,

Adv. Proceeding No. 20-04094-MER

v.

Civil No. 21-13 (PJS)

Brian J. Cristofono,

Defendant.

**APPELLANTS' DESIGNATION OF RECORD AND
STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL**

Pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure, Aneta Lennartson and Top Law, PLLC ("Appellants"), by and through undersigned counsel, hereby submit their designation of items to be included in the record on appeal and their statement of the issues to be presented on appeal.¹

I. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD.

Appellants designate the items set forth in Exhibits A through D, attached hereto, for inclusion in the record on appeal.²

¹ Undersigned Appellants' counsel, who tested positive for coronavirus in January, apologizes to the Court and the District Court for the tardiness of this document.

² Any reference to an ECF document—numbered or otherwise (as in the case of the Eighth Circuit)—also includes associated exhibits and attachments within the document family. For oral hearings, the undersigned always records remote (telephonic or videographic) hearings on his end and reserves the right to authenticate and introduce, with the Court's leave, any such audio recording to clarify any language a transcriptionist may have misheard or found unintelligible to the extent that any official ECF audio file may be unclear.

II. STATEMENT OF ISSUES ON APPEAL.

Appellants respectfully submit the following issues to be presented on appeal:

A. whether the Bankruptcy Court erred in denying—indeed, in declining to reach the merits of—Appellant’s motion to compel Defendant to replead his answer and to strike Defendant’s putative affirmative defense, and in failing to adequately explain the bases for its decision, particularly in view of its suggestion that Appellants try their hand at discovery, though the deadline to begin discovery had passed, as the hearing was held within thirty (30) days of the discovery deadline set forth in the Bankruptcy Court’s scheduling order;

B. whether the Bankruptcy Court erred in issuing its order to show cause sua sponte, and doing so without explaining its bases therefor;

C. regarding Defendant’s motion for summary judgment, whether the Bankruptcy Court erred—

1. in allowing the motion to proceed at all, given Appellant’s objection on the record at oral argument relating to the applicable deadline for bringing motions to dismiss under Rule 56 of the Federal Rules of Civil Procedure, Tr. at 6 – 7;
2. in applying the wrong legal standard or misapplying the correct legal standard;
3. in denying Appellants’ request, as stated in their response, to open the floor to an evidentiary hearing, as explicated by Judge William W. Schwarzer in his summary judgment monograph;
4. in refusing to address certain other issues Appellants raised in their response, including, but not limited to, whether (1) the motion should have been construed as an untimely motion to dismiss for failure to state a

claim upon which relief can be granted, or (2) Defendant should have been estopped from arguing as true or possibly true material he had previously denied in his answer;

5. in ignoring recent mandatory caselaw Appellants raised in their response;
6. in ignoring persuasive caselaw Appellants raised in their response to the effect that fraudulent statements include “intentional creation of false impressions by a selection of literally true representations,” *Bronston v. United States*, 409 U.S. 352, 358 n.4 (1973) (Appellants also raised this issue again during oral argument, citing two (2) other cases, from the Northern District of Illinois and the District of New Jersey);
7. in drawing factual conclusions adverse to Plaintiffs (e.g., referring to one of Appellants’ core assertions in the complaint as “nonsensical,” parroting and directly quoting the language of Defendant’s motion) in its determination of Defendant’s motion for summary judgment, rather than viewing the evidence in the light most favorable to the non-moving parties and drawing its inferences accordingly;
8. in failing to adequately explain the bases for its decision; or
9. in dismissing the case without considering whether it was ripe for summary judgment, given that no discovery had been conducted, as the Bankruptcy Court had set the hearing on Appellants’ motion to compel, *supra*, within thirty (30) days before the discovery deadline set forth in its scheduling order, a point Appellants raised on the record in their response to Defendant’s motion for summary judgment;

D. whether the Bankruptcy Court abused its discretion in sanctioning undersigned counsel under Rule 9011 of the Federal Rules of Bankruptcy Procedure; in taking the matter under advisement at its September 16, 2020, hearing, ostensibly to allow itself additional time to justify *ex post* its decision to sanction Appellants' counsel; in its failure to consider whether statements it found objectionable were, in fact, true and correct; in wading into dicta regarding attorney's fees; in opining that the undersigned, in snidely voicing his views, was "unethical," Tr. at 42; in its use of censorious language such as *deplorable*, which has taken on a loaded meaning in recent years, and *criminal*; or in the nature of the penalties meted out (and possibly whether this runs afoul the First Amendment by way of, *inter alia*, compulsory speech);

E. whether new evidence, Exhibit A, first arising in proceedings in the underlying bankruptcy case after dismissal of this adversary proceeding, should be considered in deciding this appeal; and

F. (possibly) whether the District Court should withdraw its reference of this adversary proceeding from the Bankruptcy Court.³

III. TRANSCRIPTS.

Appellants' designation of record below includes the transcripts from the hearings conducted on August 27, 2020; September 16, 2020; and December 16, 2020. All of the transcripts except the transcript of the September 16, 2020, hearing were previously ordered and appear on the docket in Adversary No. 20-04094.⁴

³ Plaintiffs' calculus of whether to brief this issue for the District Court's consideration will depend in part on whether the dispute in the underlying bankruptcy case involving the chapter 7 trustee's motion for turnover is resolved prior to this appeal's being heard.

⁴ See *infra* notes 6 – 7 and accompanying text.

IV. RESERVATION OF RIGHTS.

Appellants have attempted in good faith to designate all material portions of the record to assure that it is sufficiently complete for purposes of this appeal. To the extent that Appellants fail to designate any material part of the record, any such failure is inadvertent error; and Appellants reserve the right to seek certification of a supplemental record on appeal to correct any such inadvertent error.

Dated: March 1, 2021

Respectfully submitted,

COBB CHAUCER PLLC

/e/ Jeremy J. Cobb

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Counsel for Appellants

EXHIBIT A

In re Brian J. Cristofono (Case No. BKY 20-40994-MER)⁵
United States Bankruptcy Court for the District of Minnesota

Filing Date	#	Docket Text
01/28/2021	<u>22</u> (6 pgs)	Motion to turn over filed by Nauni Jo Manty. An affidavit or verification, Memorandum of law, Proof of service, Proposed order. Hearing scheduled 2/17/2021 at 10:30 AM at Courtroom 7 West, 7th Floor, 300 S 4th St, Minneapolis, Judge Michael E. Ridgway. (Sieling, Mary) (Entered: 01/28/2021)
02/12/2021	<u>23</u> (20 pgs)	Amended schedule(s) filed by Brian John Cristofono : Summary of Assets and Liabilities, A/B, C, I, Statement of current monthly income and means-test calculation, Verification by debtor, proof of service, Summary of Amendments (Local Form 1009-1) if required, No new creditors added to case. (Kain, William) (Entered: 02/12/2021)
02/12/2021	<u>24</u> (19 pgs)	Response to <u>22</u> Motion to turn over filed by Debtor 1 Brian John Cristofono. An affidavit or verification. (Kain, William) (Entered: 02/12/2021)
02/16/2021	<u>25</u> (2 pgs)	Notice of continued hearing (re: <u>22</u> Motion to turn over) filed by Nauni Jo Manty. Proof of service. Hearing scheduled 4/7/2021 at 01:30 PM at Courtroom 7 West, 7th Floor, 300 S 4th St, Minneapolis, Judge Michael E. Ridgway. (Sieling, Mary) (Entered: 02/16/2021)



⁵ Underlying bankruptcy case.

EXHIBIT B


Aneta Lennartson and Top Law, PLLC v. Brian J. Cristofono (Adversary No. 20-04094) (*In re Brian J. Cristofono* (Case No. BKY 20-40994-MER))

United States Bankruptcy Court for the District of Minnesota

Filing Date	#	Docket Text
06/29/2020	<u>1</u> (43 pgs)	Adversary case 20-04094. (62 (Dischargeability - 523(a)(2), false pretenses, false representation, actual fraud)), Complaint without demand for jury trial by Aneta Katarzyna Lennartson against Brian John Cristofono. Fee Amount \$350 (Cobb, Jeremy) (Entered: 06/29/2020)
07/14/2020	<u>6</u> (2 pgs)	Answer to complaint without demand for jury trial filed by Brian John Cristofono. (Hansen, Nathan) (Entered: 07/14/2020)
07/15/2020	<u>7</u> (4 pgs)	Order for trial (re: <u>1</u> Complaint) Motions Due: 11/16/2020. Discovery due by 9/15/2020. Trial date set for 1/19/2021 at 09:00 AM at Courtroom 7 West, 7th Floor, 300 S 4th St, Minneapolis, Judge Michael E. Ridgway. (Heidi MNBM) (Entered: 07/15/2020)
08/04/2020	<u>9</u> (20 pgs)	EDITED ENTRY NO PROOF OF SERVICE FILED. Motion to compel <i>Defendant to Replead Answer and Strike Putative Affirmative Defense</i> filed by Aneta Katarzyna Lennartson. An affidavit or verification, Memorandum of law, Proof of service, Proposed order. Hearing scheduled 8/27/2020 at 10:30 AM at Courtroom 7 West, 7th Floor, 300 S 4th St, Minneapolis, Judge Michael E. Ridgway. (Cobb, Jeremy) Modified on 8/5/2020 (Heidi MNBM). (Entered: 08/04/2020)
08/07/2020	<u>10</u> (3 pgs)	EDITED ENTRY CERTIFICATE OF SERVICE NOT Amended Motion re: <u>9</u> Motion to compel filed by Plaintiff Aneta Katarzyna Lennartson. Proof of service. (Cobb, Jeremy) Modified on 8/7/2020 (Heidi MNBM). (Entered: 08/07/2020)
08/21/2020	<u>11</u> (4 pgs)	Response to <u>9</u> Motion to compel filed by Defendant Brian John Cristofono. Memorandum of law. (Hansen, Nathan) (Entered: 08/21/2020)
08/25/2020	<u>12</u> (18 pgs)	Reply by Plaintiff Aneta Katarzyna Lennartson to <u>10</u> Amended motion, <u>11</u> Response. An affidavit or verification, Memorandum of law, Proof of service. (Cobb, Jeremy) (Entered: 08/25/2020)
08/27/2020	<u>13</u> (2 pgs)	Order Denying Motion to compel Defendant to Replead Answer and Strike Putative Affirmative Defense (Related Doc # <u>9</u>) (Ridgway,J.: 8/27/2020) (Michael MNBM) (Entered: 08/27/2020)
08/27/2020	<u>14</u> (2 pgs)	Order to appear and show cause re: JEREMY COBB. Hearing scheduled 9/16/2020 at 10:00 AM at Courtroom 7 West, 7th Floor, 300 S 4th St, Minneapolis, Judge Michael E. Ridgway. (Ridgway,J.: 8/27/2020) (Michael MNBM) (Entered: 08/27/2020)

Filing Date	#	Docket Text
08/27/2020	<u>15</u> (1 pg)	 PDF with attached Audio File. Court Date & Time [8/27/2020 10:30:00 AM]. File Size [7079 KB]. Run Time [00:14:45]. (admin). (Entered: 08/27/2020)
09/10/2020	<u>18</u> (10 pgs)	Motion for leave to appeal filed by Plaintiff Aneta Katarzyna Lennartson re: <u>13</u> Order on motion to compel. Proof of service, Proposed order.(Cobb, Jeremy) (Entered: 09/10/2020)
09/10/2020	<u>19</u> (5 pgs)	Notice of appeal and statement of election (conforming to Form 417A) to District Court filed by Plaintiff Aneta Katarzyna Lennartson re: <u>13</u> Order on motion to compel. Fee Amount \$298.(Cobb, Jeremy) (Entered: 09/10/2020)
09/16/2020		Minutes re: (related document(s): <u>14</u> Order to show cause) JEREMY COBB APPEARED (TELEPHONIC) FOR THE PLAINTIFF, NATHAN HANSEN APPEARED (TELEPHONIC) FOR THE PLAINTIFF. THIS MATTER WILL BE CONTINUED.(susan) (Entered: 09/16/2020)
09/16/2020	<u>22</u> (1 pg)	 PDF with attached Audio File. Court Date & Time [9/16/2020 10:00:00 AM]. File Size [8721 KB]. Run Time [00:18:10]. (admin). (Entered: 09/16/2020) ⁶
10/01/2020	<u>24</u> (17 pgs)	Transcript of hearing re: <u>9</u> Motion to compel held on 08/27/2020. Document restricted for 90 days, call Transcriber for copy. Transcriber: eScribers 973-406-2250 Notice of Intent to Request Redaction Deadline Due By 10/8/2020. Redaction Request Due By 10/22/2020. Redacted Transcript Submission Due By 11/2/2020. Transcript access will be restricted through 12/30/2020. (Gottlieb, Jason) (Entered: 10/01/2020)
11/05/2020	<u>27</u> (3 pgs)	Order on appeal from District Court re: <u>18</u> Motion for leave to appeal, <u>19</u> Notice of appeal and statement of election. DENIED. CIV NO. 20-1943. (Shelia MNBM) (Entered: 11/05/2020)
11/12/2020	<u>28</u> (9 pgs)	Motion for summary judgment filed by Defendant Brian John Cristofono. Memorandum of law, Proposed order. Hearing scheduled 12/16/2020 at 09:30 AM at Courtroom 7 West, 7th Floor, 300 S 4th St, Minneapolis, Judge Michael E. Ridgway. (Hansen, Nathan) (Entered: 11/12/2020)

⁶ Pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure, on February 16, 2021, Appellants requested the preparation of this September 16, 2020, transcript from Jason Gottlieb of eScribers, LLC, and will supplement this designation upon receipt of the transcript. See also February 16, 2021, docket entry, *infra*.

Filing Date	#	Docket Text
11/30/2020		Oral Ruling on Hearing on 14 Order to show cause. Hearing to be held on 12/16/2020 at 09:30 AM at Courtroom 7 West, 7th Floor, 300 S 4th St, Minneapolis, Judge Michael E. Ridgway. (Heidi MNBM) (Entered: 11/30/2020)
12/11/2020	29 (12 pgs)	Response to 28 Motion for summary judgment filed by Plaintiff Aneta Katarzyna Lennartson. An affidavit or verification, Memorandum of law, Proof of service. (Cobb, Jeremy) (Entered: 12/12/2020)
12/15/2020	30 (2 pgs)	Judgment on appeal from Eighth Circuit Court re: 27 Order on appeal. DENIED. USCA No. 20-8015. (Shelia MNBM) (Entered: 12/15/2020)
12/16/2020	31 (1 pg)	Order Granting Motion for summary judgment (Related Doc # 28) The plaintiffs claims in this adversary proceeding are DISMISSED, with prejudice, in their entirety. (Ridgway, J.: 12/16/2020) (Michael MNBM) (Entered: 12/16/2020)
12/16/2020	32 (2 pgs)	SANCTIONS Order Re: (re: 14 Order to show cause) Within 14 days of the date of this order, plaintiffs counsel, Mr. Jeremy Cobb, shall issue a letter of apology which will be docketed in both this adversary case and the debtors main bankruptcy case to both Mr. Nathan Hansen, debtor defendants counsel, and to the Court; Within 90 days of the date of this order, Mr. Jeremy Cobb will complete and submit appropriate proof of attendance and/or participation in three (3.0) hours of Continuing Legal Education credits on the topic(s) of professionalism and/or civility among the Bar, in accordance with the themes of the specific course examples enumerated by the Court on this record. (Ridgway, J.: 12/16/2020) (Michael MNBM) (Entered: 12/16/2020)
12/16/2020	33 (1 pg)	 PDF with attached Audio File. Court Date & Time [12/16/2020 9:30:00 AM]. File Size [32913 KB]. Run Time [01:08:34]. (admin). (Entered: 12/16/2020)
12/17/2020	34 (1 pg)	Amended Order Granting Motion for Summary Judgment (re: 28 Motion for summary judgment, 31 Order on motion for summary judgment. Motion for summary judgment GRANTED in its entirety. The debt owed by debtors to the plaintiffs is not excepted from discharge. LET JUDGMENT BE ENTERED ACCORDINGLY. (Heidi MNBM) (Entered: 12/17/2020)
12/17/2020	35 (1 pg)	Judgment for adv 4:20-ap-4094. THE DEBT OWED BY THE DEBTOR DEFENDANT TO THE PLAINTIFFS IS NOT EXCEPTED FROM DISCHARGE. (Heidi MNBM) (Entered: 12/17/2020)

Filing Date	#	Docket Text
12/30/2020	40 (10 pgs)	Notice of appeal and statement of election (conforming to Form 417A) to District Court filed by Plaintiff Aneta Katarzyna Lennartson, Top Law PLLC re: 13 Order on motion to compel, 32 Order to/for, 34 Amended order. Fee Amount \$298.(Cobb, Jeremy) (Entered: 12/30/2020)
12/30/2020	41 (1 pg)	Exhibits <i>Letter</i> (re: 32 Order to/for) filed by Aneta Katarzyna Lennartson, Top Law PLLC.(Cobb, Jeremy) (Entered: 12/30/2020)
01/18/2021	44	Transcript of hearing re: 28 Motion for summary judgment held on 12/16/2020. Document restricted for 90 days, call Transcriber for copy. Transcriber: eScribers 973-406-2250 Notice of Intent to Request Redaction Deadline Due By 1/25/2021. Redaction Request Due By 02/8/2021. Redacted Transcript Submission Due By 02/18/2021. Transcript access will be restricted through 04/19/2021. (Gottlieb, Jason) (Entered: 01/18/2021)
02/16/2021		Transcript ordered.(Cobb, Jeremy) (Entered: 02/16/2021) ⁷

⁷ See *supra* note 6.

EXHIBIT C

Aneta Lennartson and Top Law, PLLC v. Brian J. Cristofono (Adversary No. 20-04094) (*In re Brian J. Cristofono* (Case No. BKY 20-40994-MER)) (Bankr. D. Minn.)






Interlocutory Appeal to the United States District Court for the District of Minnesota
(Civil No. 20-1943 (JRT))

Date Filed	#	Docket Text
09/14/2020	<u>1</u>	MOTION FOR LEAVE TO APPEAL from United States Bankruptcy Court for the District of Minnesota. Bankruptcy Court case number 20-40994. Adversary Proceeding number 20-4094. filed by Aneta Lennartson and Top Law, PLLC. (Attachments: # <u>1</u> Notice of Appeal, # <u>2</u> Clerk's Notice on Appeal, # <u>3</u> Election to District Court, # <u>4</u> Identification of Residence, # <u>5</u> Adversary Docket, # <u>6</u> Bankruptcy Docket, # <u>7</u> Order on Appeal) (sd) (Entered: 09/14/2020)
10/05/2020	<u>5</u>	CLERK'S NOTICE OF RECEIPT AND ASSIGNMENT IN RE: BANKRUPTCY TRANSMITTAL re <u>1</u> MOTION FOR LEAVE TO APPEAL from United States Bankruptcy Court for the District of Minnesota. Bankruptcy Court case number 20-40994. Adversary Proceeding number 20-4094. (lmb) (Entered: 10/05/2020)
10/15/2020	<u>6</u>	LETTER TO DISTRICT JUDGE by Aneta Lennartson and Top Law, PLLC <i>Requesting Permission to File Supplemental Memorandum</i> . (Cobb, Jeremy) (Entered: 10/15/2020)
10/22/2020	7	(Text-Only) ORDER in Response to <u>6</u> Letter to District Judge. Permission to file supplemental statement granted. Supplemental statement due by 10/29/2020. Ordered by Chief Judge John R. Tunheim on 10/22/2020.(HAZ) (Entered: 10/22/2020)
10/29/2020	<u>8</u>	MEMORANDUM in Support re <u>1</u> MOTION FOR LEAVE TO APPEAL from United States Bankruptcy Court for the District of Minnesota. Bankruptcy Court case number 20-40994. Adversary Proceeding number 20-4094. <i>Supplemental Memorandum</i> filed by Aneta Lennartson and Top Law, PLLC. (Attachments: # <u>1</u> DOCUMENT FILED IN ERROR. LR7.1/LR72.2 Word Count Compliance Certificate)(Cobb, Jeremy) Modified text on 10/30/2020 (CLK). (Entered: 10/29/2020)
11/04/2020	<u>10</u>	ORDER denying <u>1</u> Motion for Leave to Appeal from United States Bankruptcy Court for the District of Minnesota. Signed by Chief Judge John R. Tunheim on 11/4/2020. (HAZ) (Entered: 11/04/2020)

EXHIBIT D

Aneta Lennartson and Top Law, PLLC v. Brian J. Cristofono (Adversary No. 20-04094) (*In re Brian J. Cristofono* (Case No. BKY 20-40994-MER)) (Bankr. D. Minn.)

Interlocutory Appeal to the United States Court of Appeals for the Eighth Circuit
(No. 20-8015)⁸

Date Filed or Entered	Doc.	Docket Text
12/04/2020		PETITION for Permission to Appeal pursuant to 28 U.S.C. Section 1292(b) (Electronic) filed by Petitioners Aneta Lennartson and Top Law, PLLC w/service 12/07/2020 **Corrected Docketing Letter sent on 12/8/20** [4982673] [20-8015]--[Edited 12/09/2020 by EDG] (MMH) [Entered: 12/07/2020 03:34 PM]
12/09/2020		RESPONSE in opposition to petition [4982673-2], petition [4982673-3] filed by Attorney Mr. Nathan Myrum Hansen for Respondent Brian J. Cristofono , w/service 12/09/2020. [4983674] [20-8015] (NMH) [Entered: 12/09/2020 02:39 PM]
12/09/2020		CORRECTED/INITIAL certificate of service for response, Doc No. [4983674-2], filed by Respondent Brian J. Cristofono [4983679] [20-8015] (NMH) [Entered: 12/09/2020 02:42 PM]
12/15/2020		JUDGMENT FILED - Denying [4982673-2] petition for interlocutory appeal filed by Petitioners Aneta Lennartson and Top Law, PLLC., DENIED. Mandate shall issue forthwith. BOBBY E. SHEPHERD, ROGER L. WOLLMAN and DAVID R. STRAS Adp Dec 2020 [4985016] [20-8015] (CMD) [Entered: 12/15/2020 08:43 AM]
12/15/2020		MANDATE ISSUED. [4985026] [20-8015] (CMD) [Entered: 12/15/2020 09:08 AM]

⁸ While it is axiomatic that the District Court does not have appellate jurisdiction over decisions of the Eighth Circuit Court of Appeals, the proceedings before the Eighth Circuit in the instant case informed the decision of the Bankruptcy Court and appear on its docket.